

page 35 of the specification was not filed on April 16, 2001, since that page is not present in the file. An applicant alleging that a paper was filed in the PTO and later misplaced has the burden of proving the allegation by a preponderance of the evidence. The declaration relied on contains the declarants' recall of routine events which occurred 4 months earlier and are not more persuasive than the record of what was filed as shown by the official file.

Because page 35 of the specification was not present on April 16, 2001, the date the application was filed, page 35 cannot be considered a part of the original disclosure of the application. Accordingly, the application cannot be accorded the filing date of April 16, 2001, with page 35 as a part of the original disclosure.

Accordingly, the petition is **DISMISSED**.

Page 35, submitted with the instant petition on August 13, 2001, will not be entered or used during the prosecution of this application. However, applicant may resubmit the matter included in page 35 as an amendment for consideration by the examiner under Sections 608.02(p) and 608.04 of the Manual of Patent Examining Procedure.

Any request for reconsideration of this decision should be filed within **TWO (2) MONTHS** of the date of this decision in order to be considered timely. 37 CFR 1.181(f). This time period may not be extended pursuant to 37 CFR 1.136.

Further correspondence with respect to this matter should be addressed as follows:

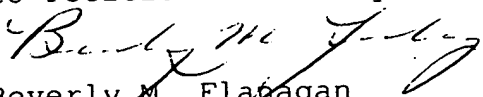
By mail: Commissioner for Patents
Box DAC
Washington, D.C. 20231

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Office of Petitions
2201 South Clark Place
Crystal Plaza 4, Suite 3C23
Arlington, VA 22202

The application file will be forwarded to the Office of Initial Patent Examination for further processing with a filing date of April 16, 2001, using the pages of the specification filed on that date.

Telephone inquiries related to this decision should be directed to Petitions Attorney Cliff Congo at 703-305-0272.


Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy



Paper No. 4

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OFFICE OF PETITIONS

In re Application of
Vange, et al.
Application No. 09/835,874
Filed: April 16, 2001
Title: CONDUCTOR GATEWAY BUFFER
PRIORITIZATION

DECISION ON PETITION

This is a decision on the petition filed August 13, 2001, to accord the above-identified application a filing date of April 16, 2001, with page 35 of the specification as a part of the original disclosure.

Application papers in the above-identified application were filed on April 16, 2001. However, on June 11, 2001, the Initial Patent Examination Division mailed applicant a "Notice to File Missing Parts of Nonprovisional Application - Filing Date Granted." Applicant was notified that the application papers had been accorded a filing date; however, the filing fee was missing and the oath or declaration was unsigned. In addition, the Notice informed applicant that page 35 of the specification appeared to have been omitted from the application.

In response, on August 13, 2001¹, applicant filed the present petition to accord a filing date of April 16, 2001, with page 35 of the specification as part of the original disclosure. Applicant asserted that page 35 was with the application as originally filed on April 16, 2001. As proof thereof, applicant submitted a copy of a date-stamped postcard receipt, indicating that the following items were received by the PTO on April 16, 2001: (1) Utility Patent Application; (2) 9 Sheets of Drawings; (3) Utility Patent Transmittal; (4) Unexecuted Declaration; (5) Certificate of Mailing by Express Mail; and (6) Return Postcard.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of the items. See MPEP 503. Here, the postcard receipt does not identify the number of pages of the Utility Patent Application. The postcard receipt does acknowledge receipt of the Utility Patent Transmittal. Examination of the Utility Patent Transmittal denotes 61 pages of specification. However, a postcard receipt which references a transmittal letter only serves as evidence of receipt in the Office of the transmittal letter, and not of items which are listed on the transmittal letter.

The PTO file is the official record of papers originally filed in this application. A review of the official file reveals that

¹ Because August 11, 2001 was a Saturday, the petition filed via Express Mail on August 13th was timely.